

cant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The Director shall have the discretion to designate any attorney who is an officer or employee of the United States Patent and Trademark Office to conduct the hearing required by this section. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Director upon the petition of the person so refused recognition or so suspended or excluded.

(July 19, 1952, ch. 950, 66 Stat. 795; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4715(c), 4719, 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580 to 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 11 (R.S. 487, amended Feb. 18, 1922, ch. 58, § 3, 42 Stat. 390).
See note under section 31.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” in first and last sentences.

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4719], inserted before last sentence “The Director shall have the discretion to designate any attorney who is an officer or employee of the United States Patent and Trademark Office to conduct the hearing required by this section.”

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4715(c)], substituted “2(b)(2)(D)” for “31”.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 33. Unauthorized representation as practitioner

Whoever, not being recognized to practice before the Patent and Trademark Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than \$1,000 for each offense.

(July 19, 1952, ch. 950, 66 Stat. 796; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 11a (May 9, 1938, ch. 188, 52 Stat. 342).

This is a criminal statute. The language has been considerably simplified and the upper limit of the penalty is increased.

AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

CHAPTER 4—PATENT FEES; FUNDING; SEARCH SYSTEMS

Sec.

- 41. Patent fees; patent and trademark search systems.
- 42. Patent and Trademark Office funding.

AMENDMENTS

1991—Pub. L. 102-204, § 5(d)(2)(B), (C), Dec. 10, 1991, 105 Stat. 1640, inserted “; FUNDING; SEARCH SYSTEMS” after “FEES” in chapter heading, inserted “; patent and trademark search systems” after “fees” in item 41, and substituted “Patent and Trademark Office funding” for “Payment of patent fees; return of excess amounts” in item 42.

§ 41. Patent fees; patent and trademark search systems

(a) The Director shall charge the following fees:

(1)(A) On filing each application for an original patent, except in design or plant cases, \$690.

(B) In addition, on filing or on presentation at any other time, \$78 for each claim in independent form which is in excess of 3, \$18 for each claim (whether independent or dependent) which is in excess of 20, and \$260 for each application containing a multiple dependent claim.

(C) On filing each provisional application for an original patent, \$150.

(2) For issuing each original or reissue patent, except in design or plant cases, \$1,210.

(3) In design and plant cases—

- (A) on filing each design application, \$310;
- (B) on filing each plant application, \$480;
- (C) on issuing each design patent, \$430; and
- (D) on issuing each plant patent, \$580.

(4)(A) On filing each application for the reissue of a patent, \$690.

(B) In addition, on filing or on presentation at any other time, \$78 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$18 for each claim (whether independent or dependent) which is in excess of 20 and also in excess of the number of claims of the original patent.

(5) On filing each disclaimer, \$110.

(6)(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$300.

(B) In addition, on filing a brief in support of the appeal, \$300, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$260.

(7) On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in any reexamination proceeding, \$1,210, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$110.

(8) For petitions for 1-month extensions of time to take actions required by the Director in an application—

- (A) on filing a first petition, \$110;
- (B) on filing a second petition, \$270; and
- (C) on filing a third petition or subsequent petition, \$490.

(9) Basic national fee for an international application where the Patent and Trademark Office was the International Preliminary Examining Authority and the International Searching Authority, \$670.

(10) Basic national fee for an international application where the Patent and Trademark Office was the International Searching Authority but not the International Preliminary Examining Authority, \$690.

(11) Basic national fee for an international application where the Patent and Trademark Office was neither the International Searching Authority nor the International Preliminary Examining Authority, \$970.

(12) Basic national fee for an international application where the international preliminary examination fee has been paid to the Patent and Trademark Office, and the international preliminary examination report states that the provisions of Article 33(2), (3), and (4) of the Patent Cooperation Treaty have been satisfied for all claims in the application entering the national stage, \$96.

(13) For filing or later presentation of each independent claim in the national stage of an international application in excess of 3, \$78.

(14) For filing or later presentation of each claim (whether independent or dependent) in a national stage of an international application in excess of 20, \$18.

(15) For each national stage of an international application containing a multiple dependent claim, \$260.

For the purpose of computing fees, a multiple dependent claim referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Director.

(b) The Director shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

- (1) 3 years and 6 months after grant, \$830.
- (2) 7 years and 6 months after grant, \$1,900.
- (3) 11 years and 6 months after grant, \$2,910.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force.

(c)(1) The Director may accept the payment of any maintenance fee required by subsection (b) of this section which is made within twenty-four

months after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unintentional, or at any time after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable. The Director may require the payment of a surcharge as a condition of accepting payment of any maintenance fee after the six-month grace period. If the Director accepts payment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

(2) A patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall not abridge or affect the right of any person or that person's successors in business who made, purchased, offered to sell, or used anything protected by the patent within the United States, or imported anything protected by the patent into the United States after the 6-month grace period but prior to the acceptance of a maintenance fee under this subsection, to continue the use of, to offer for sale, or to sell to others to be used, offered for sale, or sold, the specific thing so made, purchased, offered for sale, used, or imported. The court before which such matter is in question may provide for the continued manufacture, use, offer for sale, or sale of the thing made, purchased, offered for sale, or used within the United States, or imported into the United States, as specified, or for the manufacture, use, offer for sale, or sale in the United States of which substantial preparation was made after the 6-month grace period but before the acceptance of a maintenance fee under this subsection, and the court may also provide for the continued practice of any process that is practiced, or for the practice of which substantial preparation was made, after the 6-month grace period but before the acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the 6-month grace period but before the acceptance of a maintenance fee under this subsection.

(d) The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Director shall charge the following fees for the following services:

- (1) For recording a document affecting title, \$40 per property.
- (2) For each photocopy, \$.25 per page.
- (3) For each black and white copy of a patent, \$3.

The yearly fee for providing a library specified in section 13¹ of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be \$50.

(e) The Director may waive the payment of any fee for any service or material related to patents in connection with an occasional or incidental request made by a department or agen-

¹ See References in Text note below.

cy of the Government, or any officer thereof. The Director may provide any applicant issued a notice under section 132 of this title with a copy of the specifications and drawings for all patents referred to in that notice without charge.

(f) The fees established in subsections (a) and (b) of this section may be adjusted by the Director on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 per centum may be ignored.

(g) No fee established by the Director under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

(h)(1) Fees charged under subsection (a) or (b) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or non-profit organization as defined in regulations issued by the Director.

(2) With respect to its application to any entity described in paragraph (1), any surcharge or fee charged under subsection (c) or (d) shall not be higher than the surcharge or fee required of any other entity under the same or substantially similar circumstances.

(i)(1) The Director shall maintain, for use by the public, paper, microform, or electronic collections of United States patents, foreign patent documents, and United States trademark registrations arranged to permit search for and retrieval of information. The Director may not impose fees directly for the use of such collections, or for the use of the public patent or trademark search rooms or libraries.

(2) The Director shall provide for the full deployment of the automated search systems of the Patent and Trademark Office so that such systems are available for use by the public, and shall assure full access by the public to, and dissemination of, patent and trademark information, using a variety of automated methods, including electronic bulletin boards and remote access by users to mass storage and retrieval systems.

(3) The Director may establish reasonable fees for access by the public to the automated search systems of the Patent and Trademark Office. If such fees are established, a limited amount of free access shall be made available to users of the systems for purposes of education and training. The Director may waive the payment by an individual of fees authorized by this subsection upon a showing of need or hardship, and if such a waiver is in the public interest.

(4) The Director shall submit to the Congress an annual report on the automated search systems of the Patent and Trademark Office and the access by the public to such systems. The Director shall also publish such report in the Federal Register. The Director shall provide an opportunity for the submission of comments by interested persons on each such report.

(July 19, 1952, ch. 950, 66 Stat. 796; Pub. L. 89-83, §§1, 2, July 24, 1965, 79 Stat. 259; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94-131, §3,

Nov. 14, 1975, 89 Stat. 690; Pub. L. 96-517, §2, Dec. 12, 1980, 94 Stat. 3017; Pub. L. 97-247, §3(a)-(e), Aug. 27, 1982, 96 Stat. 317-319; Pub. L. 97-256, title I, §101(1)-(4), Sept. 8, 1982, 96 Stat. 816; Pub. L. 98-622, title II, §204(a), Nov. 8, 1984, 98 Stat. 3388; Pub. L. 99-607, §1(b)(2), Nov. 6, 1986, 100 Stat. 3470; Pub. L. 102-204, §5(a)-(c)(1), (d)(1), (2)(A), Dec. 10, 1991, 105 Stat. 1637-1639; Pub. L. 102-444, §1, Oct. 23, 1992, 106 Stat. 2245; Pub. L. 103-465, title V, §§532(b)(2), 533(b)(1), Dec. 8, 1994, 108 Stat. 4986, 4988; Pub. L. 105-358, §3, Nov. 10, 1998, 112 Stat. 3272; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4202, 4605(a), 4732(a)(5), (10)(A), 4804(d)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A-554, 1501A-570, 1501A-582, 1501A-589; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §78 (R.S. 4934, amended (1) May 27, 1908, ch. 200, §1 (part), 35 Stat. 317, 343; (2) June 25, 1910, ch. 414, §2, 35 Stat. 843; (3) Feb. 18, 1922, ch. 58, §9, 42 Stat. 389, 393; (4) Feb. 14, 1927, ch. 139, §2, 44 Stat. 1098, 1099; (5) Mar. 2, 1927, ch. 273, §13, 44 Stat. 1335, 1337; (6) April 11, 1930, ch. 132, §3, 46 Stat. 155; (7) June 30, 1932, ch. 314, §§308, 309, 47 Stat. 382, 410; (8) Aug. 9, 1939, ch. 619, §3, 53 Stat. 1293; July 5, 1946, ch. 541, §301 (part), 60 Stat. 446, 471).

The items in the schedule of fees are rearranged in a few instances and are numbered for convenient reference.

The obsolete fee for appeal from the examiners of interferences to the Board of Appeals is omitted.

The fee for appeal to the Board of Appeals is changed from \$15 to \$25.

Two provisos in the corresponding section of the existing statute have been made separate sections, see sections 12 and 13.

The fee for a certificate is changed from 50 cents to \$1 to correspond to the same fee in the trade-mark statute.

A new item (8) is added to go with section 205.

An omnibus item to take care of miscellaneous minor fees is added; in view of this, two items in the present schedule are omitted.

The fee for reissue applications is changed slightly.

REFERENCES IN TEXT

Section 13 of this title, referred to in subsec. (d), was renumbered section 12 of this title by Pub. L. 106-113, §1000(a)(9) [title IV, §4717(1)], Nov. 29, 1999, 113 Stat. 1501A-536, 1501A-580.

Section 3 of the Small Business Act, referred to in subsec. (h)(1), is classified to section 632 of Title 15, Commerce and Trade.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted "Director" for "Commissioner" in introductory and concluding provisions.

Subsec. (a)(1)(A), (4)(A). Pub. L. 106-113, §1000(a)(9) [title IV, §4202(a), (b)], substituted "\$690" for "\$760".

Subsec. (a)(7). Pub. L. 106-113, §1000(a)(9) [title IV, §4605(a)], amended par. (7) generally. Prior to amendment, par. (7) read as follows: "On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, \$1,210, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$110."

Subsec. (a)(8). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], substituted "Director" for "Commissioner" in introductory provisions.

Subsec. (a)(10). Pub. L. 106-113, §1000(a)(9) [title IV, §4202(c)], substituted “\$690” for “\$760”.

Subsec. (b). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], substituted “Director” for “Commissioner” in introductory and concluding provisions.

Subsec. (b)(1). Pub. L. 106-113, §1000(a)(9) [title IV, §4202(d)], substituted “\$830” for “\$940”.

Subsecs. (c) to (g). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], substituted “Director” for “Commissioner” wherever appearing.

Subsec. (h)(1). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(5)], substituted “Director” for “Commissioner of Patents and Trademarks”.

Subsec. (i)(1). Pub. L. 106-113, §1000(a)(9) [title IV, §4804(d)(1)], substituted “paper, microform, or electronic” for “paper or microform”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)] substituted “Director” for “Commissioner” in two places.

Subsec. (i)(2) to (4). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], substituted “Director” for “Commissioner” wherever appearing.

1998—Subsec. (a). Pub. L. 105-358, §3(a), added subsec. (a) and struck out former subsec. (a) which listed fees for patent services.

Subsec. (b). Pub. L. 105-358, §3(b), added subsec. (b) and struck out former subsec. (b) which read as follows: “The Commissioner shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

“(1) 3 years and 6 months after grant, \$650.

“(2) 7 years and 6 months after grant, \$1,310.

“(3) 11 years and 6 months after grant, \$1,980.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee. No fee will be established for maintaining a design or plant patent in force.”

1994—Subsec. (a)(1)(C). Pub. L. 103-465, §532(b)(2), added subpar. (C).

Subsec. (c)(2). Pub. L. 103-465, §533(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “No patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall abridge or affect the right of any person or his successors in business who made, purchased or used after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased, or used as specified, or for the manufacture, use or sale of which substantial preparation was made after the six-month grace period but before the acceptance of a maintenance fee under this subsection, and it may also provide for the continued practice of any process, practiced, or for the practice of which substantial preparation was made, after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the six-month grace period but before the acceptance of a maintenance fee under the subsection.”

1992—Subsec. (c)(1). Pub. L. 102-444 inserted after “section” in first sentence “which is made within twenty-four months after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unintentional, or at any time”.

1991—Pub. L. 102-204, §5(d)(2)(A), inserted “; patent and trademark search systems” after “fees” in section catchline.

Subsec. (a). Pub. L. 102-204, §5(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Commissioner shall charge the following fees:

“1. On filing each application for an original patent, except in design or plant cases, \$300; in addition, on filing or on presentation at any other time, \$30 for each claim in independent form which is in excess of three, \$10 for each claim (whether independent or dependent) which is in excess of twenty, and \$100 for each application containing a multiple dependent claim. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

“2. For issuing each original or reissue patent, except in design or plant cases, \$500.

“3. In design and plant cases:

“a. On filing each design application, \$125.

“b. On filing each plant application, \$200.

“c. On issuing each design patent, \$175.

“d. On issuing each plant patent, \$250.

“4. On filing each application for the reissue of a patent, \$300; in addition, on filing or on presentation at any other time, \$30 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$10 for each claim (whether independent or dependent) which is in excess of twenty and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

“5. On filing each disclaimer, \$50.

“6. On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$115; in addition, on filing a brief in support of the appeal, \$115, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$100.

“7. On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, \$500, unless the petition is filed under sections 133 or 151 of this title, in which case the fee shall be \$50.

“8. For petitions for one-month extensions of time to take actions required by the Commissioner in an application:

“a. On filing a first petition, \$50.

“b. On filing a second petition, \$100.

“c. On filing a third or subsequent petition, \$200.”

Subsec. (b). Pub. L. 102-204, §5(a)(2), substituted “in force all patents based on applications filed on or after December 12, 1980:

“(1) 3 years and 6 months after grant, \$650.

“(2) 7 years and 6 months after grant, \$1,310.

“(3) 11 years and 6 months after grant, \$1,980.”

for “a patent in force:

“1. Three years and six months after grant, \$400.

“2. Seven years and six months after grant, \$800.

“3. Eleven years and six months after grant, \$1,200.”

Subsec. (d). Pub. L. 102-204, §5(a)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The Commissioner will establish fees for all other processing, services, or materials related to patents not specified above to recover the estimated average cost to the Office of such processing, services, or materials. The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents issued in that year will be \$50.”

Subsec. (f). Pub. L. 102-204, §5(b), substituted “on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months” for “on October 1, 1985, and every third year thereafter, to reflect any fluctuations occurring during the previous three years”.

Subsec. (g). Pub. L. 102-204, §5(c)(1), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as

follows: “No fee established by the Commissioner under this section will take effect prior to sixty days following notice in the Federal Register.”

Subsec. (i). Pub. L. 102-204, §5(d)(1), added subsec. (i).
1986—Subsec. (h). Pub. L. 99-607 added subsec. (h).

1984—Subsec. (a)(6). Pub. L. 98-622 substituted “Patent Appeals and Interferences” for “Appeals” in two places and inserted “in the appeal” after “oral hearing”.

1982—Subsec. (a). Pub. L. 97-247, §3(a), substituted provisions setting a schedule of fees for provisions which had directed that the Commissioner establish fees for the processing of an application for a patent, from filing through disposition by issuance or abandonment, for maintaining a patent in force, and for providing all other services and materials related to patents and that fee would be established for maintaining a design patent in force.

Pub. L. 97-256, §101(1), struck out “of Patents” after “Commissioner”.

Subsec. (b). Pub. L. 97-247, §3(b), substituted provisions setting a fee schedule for maintaining a patent in force for provisions which had directed that, fees for the actual processing of an application for a patent, other than for a design patent, from filing through disposition by issuance or abandonment, were to recover in aggregate 25 per centum of the estimated average cost to the Office of such processing and that fees for the processing of an application for a design patent, from filing through disposition by issuance or abandonment, were to recover in aggregate 50 per centum of the estimated average cost to the Office of such processing.

Pub. L. 97-256, §101(2), substituted “October 1, 1982” for “the first day of the first fiscal year beginning on or after one calendar year after enactment of this Act” and “the first day of the first fiscal year beginning on or after one calendar year after enactment”.

Subsec. (c). Pub. L. 97-247, §3(c), substituted maintenance provisions for provisions which had directed that fees for maintaining patents in force were to recover 25 per centum of the estimated cost to the Office, for the year in which such maintenance fees were received, of the actual processing all applications for patents, other than for design patents, from filing through disposition by issuance or abandonment, that fees for maintaining a patent in force would be due three years and six months, seven years and six months, and eleven years and six months after the grant of the patent, that unless payment of the applicable maintenance fee was received in the Patent and Trademark Office on or before the date the fee was due or within a grace period of six months thereafter, the patent would expire as of the end of such grace period, and that the Commissioner could require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee.

Pub. L. 97-256, §101(3), substituted “October 1, 1996” for “the fifteenth fiscal year following the date of enactment of this Act”.

Subsec. (d). Pub. L. 97-247, §3(d), substituted provisions relating to fees for all other processing services or materials relating to patents not previously specified for provisions directing that fees for all other services or materials related to patents were to recover the estimated average cost to the Office of performing the service or furnishing the material.

Pub. L. 97-256, §101(4), substituted “October 1, 1982” for “the first day of the first fiscal year beginning on or after one calendar year after enactment”.

Subsec. (f). Pub. L. 97-247, §3(e), substituted provisions relating to the adjustment of fees to reflect CPI fluctuations for provisions directing that fees were to be adjusted by the Commissioner to achieve the levels of recovery specified in this section but that no patent application processing fee or fee for maintaining a patent in force was to be adjusted more than once every three years.

1980—Pub. L. 96-517 in revising fee provisions by substituting subsecs. (a) to (g) for prior subsecs. (a) to (c), required the Commissioner to establish fees based on

recovery of estimated average cost of processing applications, performing miscellaneous services and providing material, required fees for maintenance of patents in force and provided for expiration of patents for non-payments, prescribed \$50 library fee for copies of specifications and drawings, authorized triennial adjustments, prescribed effective date for fees, and incorporated in subsec. (e) waiver provision of former subsec. (c).

1975—Subsec. (a)1. Pub. L. 94-131 inserted sentence respecting consideration of a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom as separate dependent claims in accordance with the number of claims to which reference is made for the purpose of computing fees.

Subsec. (b). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1965—Subsec. (a)1. Pub. L. 89-83, §1, increased the filing fee for original patents from \$30 to \$65, changed the additional fee from \$1 for each claim in excess of twenty to \$10 for each claim in independent form which is in excess of one and \$2 for each claim (whether independent or dependent) which is in excess of ten, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)2. Pub. L. 89-83, §1, applied the issue fee to reissue patents as well as to original patents, increased such fee from \$30 to \$100, and changed the additional fee from \$1 for each claim in excess of twenty to \$10 for each page (or portion thereof) of specification as printed and \$2 for each sheet of drawing.

Subsec. (a)3. Pub. L. 89-83, §1, changed the fee structure applicable to design patents from a filing fee of \$10, \$15, or \$30 for terms of 3½, 7, or 14 years, respectively, to a filing fee of \$20 and an issue fee of \$10, \$20, or \$30 for terms of 3½, 7, or 14 years, respectively.

Subsec. (a)4. Pub. L. 89-83, §1, increased the filing fee for reissue patents from \$30 to \$65, changed the additional fee from \$1 for each claim in excess of twenty over and above the number of claims in the original patent to \$10 for each claim in independent form which is in excess of the number of independent claims of the original patent and \$2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims in the original patent, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)5. Pub. L. 89-83, §1, increased the fee for filing disclaimers from \$10 to \$15.

Subsec. (a)6. Pub. L. 89-83, §1, increased the fee on appeal for the first time from the examiner to the Board of Appeals from \$25 to \$50, and added the additional \$50 fee for filing a brief in support of the appeal.

Subsec. (a)7. Pub. L. 89-83, §1, increased the fee for filing a petition for the revival of an abandoned application or for the delayed payment of the issuance fee from \$10 to \$15.

Subsec. (a)8. Pub. L. 89-83, §1, inserted fee for the certificate under section 256 of this title, and increased the fee for a certificate under section 255 of this title from \$10 to \$15.

Subsec. (a)9. Pub. L. 89-83, §1, increased the fee for copies of specifications and drawings of patents (other than design patents) from 25 cents to 50 cents per copy and the fee for copies of specifications and drawings of design patents from 10 cents to 20 cents per copy, and permitted the Commissioner to establish a charge not to exceed \$1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color and to provide applicants, without charge, with copies of specifications and drawings when referred to in a section 132 notice.

Subsec. (a)10. Pub. L. 89-83, §1, changed the recording fee from \$3 for every document not exceeding six pages and \$1 for each additional two pages or less to a flat \$20 fee for every document, and substituted a \$3 fee for each additional item where the document relates to more than one patent or application for a 50 cents addi-

tional fee for each additional patent or application included in one writing where more than one is so included.

Subsec. (c). Pub. L. 89-83, § 2, added subsec. (c).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle B, § 4206], Nov. 29, 1999, 113 Stat. 1536, 1501A-555, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [amending this section and section 42 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1999].

“(b) SECTION 4202.—The amendments made by section 4202 [amending this section] of this subtitle shall take effect 30 days after the date of the enactment of this Act.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle F, § 4608], Nov. 29, 1999, 113 Stat. 1536, 1501A-572, provided that:

“(a) IN GENERAL.—Subject to subsection (b), this subtitle [enacting chapter 31 of this title, amending this section and sections 100, 134, 141, 143, and 145 of this title, and enacting provisions set out as notes under sections 1, 311, and 315 of this title] and the amendments made by this subtitle shall take effect on the date of the enactment of this Act [Nov. 29, 1999] and shall apply to any patent that issues from an original application filed in the United States on or after that date.

“(b) SECTION 4605(a).—The amendments made by section 4605(a) [amending this section] shall take effect on the date that is 1 year after the date of the enactment of this Act.”

Amendment by section 1000(a)(9) [title IV, §§ 4732(a)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-358, § 5, Nov. 10, 1998, 112 Stat. 3274, provided that: “This Act [amending this section and section 42 of this title and enacting provisions set out as a note under section 1 of this title] and the amendments made by this Act shall take effect on October 1, 1998.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 532(b)(2) of Pub. L. 103-465 effective 6 months after Dec. 8, 1994, and applicable to all patent applications filed in the United States on or after that effective date, with provisions relating to earliest filed patent application, see section 534(b)(1), (3) of Pub. L. 103-465, set out as a note under section 154 of this title.

Amendment by section 533(b)(1) of Pub. L. 103-465 effective on date that is one year after date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see section 534(a), (b)(3) of Pub. L. 103-465, set out as a note under section 154 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2 of Pub. L. 102-444 provided that: “The amendment made by section 1 [amending this section] shall take effect on the date of the enactment of this Act [Oct. 23, 1992].”

EFFECTIVE DATE OF 1991 AMENDMENT

Section 13 of Pub. L. 102-204 provided that: “This Act [amending this section, sections 6, 42, 202, 371, and 376 of this title, and section 1113 of Title 15, Commerce and Trade, enacting provisions set out as notes under this section, section 6 of this title, and section 1113 of Title 15, and amending and repealing provisions set out as notes under this section] takes effect on the date of the enactment of this Act [Dec. 10, 1991], except that the

fees established by the amendment made by section 5(a) [amending this section] shall take effect on or after 1 day after such fees are published in the Federal Register.”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-622, title II, § 207, Nov. 8, 1984, 98 Stat. 3389, provided that: “Section 206 of this Act [98 Stat. 3388] and the amendments made by this title [amending this section, sections 7, 134, 135, 141, 145, 146, and 305 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare] shall take effect three months after the date of the enactment of this Act [Nov. 8, 1984].”

EFFECTIVE DATE OF 1982 AMENDMENT

Section 17(a) of Pub. L. 97-247 provided that: “Sections 1, 2, 4, 7, and 13 through 15 of this Act [amending sections 3, 6, 13, 115, and 261 of this title and section 1061 of Title 15, Commerce and Trade] shall take effect on the date of enactment of this Act [Aug. 27, 1982]. Sections 3 and 16 of this Act [amending this section, sections 42 and 173 of this title, and section 113 of Title 15] shall take effect on October 1, 1982. The maintenance fees provided for in section 3(b) of this Act [amending this section] shall not apply to patents applied for prior to the date of enactment of this Act. Each patent applied for on or after the date of enactment of this Act shall be subject to the maintenance fees established pursuant to section 3(b) of this Act or to maintenance fees hereafter established by law, as to the amounts paid and the number and timing of the payments.”

EFFECTIVE DATE OF 1980 AMENDMENT

Section 8 of Pub. L. 96-517 provided that:

“(a) Sections 2, 4, and 5 of this Act [amending this section, section 154 of this title, and section 1113 of Title 15, Commerce and Trade] will take effect upon enactment [Dec. 12, 1980].

“(b) Section 1 of this Act [enacting sections 301 to 307 of this title] will take effect on the first day of the seventh month beginning after its enactment [Dec. 12, 1980] and will apply to patents in force as of that date or issued thereafter.

“(c) Section 3 of this Act [amending section 42 of this title] will take effect on the first day of the first fiscal year beginning on or after one calendar year after enactment [Dec. 12, 1980]. However, until section 3 takes effect, the Commissioner may credit the Patent and Trademark Office appropriation account in the Treasury of the United States with the revenues from collected reexamination fees, which will be available to pay the costs to the Office of reexamination proceedings.

“(d) Any fee in effect as of the date of enactment of this Act [Dec. 12, 1980] will remain in effect until a corresponding fee established under section 41 of title 35, United States Code, or section 1113 of title 15, United States Code, takes effect.

“(e) Fees for maintaining a patent in force will not be applicable to patents applied for prior to the date of enactment of this Act [Dec. 12, 1980].

“(f) Sections 6 and 7 of this Act [enacting sections 200 to 211 of this title and amending sections 2186, 2457, and 5908 of Title 42, The Public Health and Welfare] will take effect on the first day of the seventh month beginning after its enactment [Dec. 12, 1980]. Implementing regulations may be issued earlier.

“(g) Sections 8 and 9 [enacting this note and provision set out as a note under section 14 of this title] will take effect on the date of enactment of this Act [Dec. 12, 1980].”

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international ap-

plications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 7 of Pub. L. 89-83 provided that:

“(a) This Act [amending this section, sections 112, 151, 154, and 282 of this title, and section 1113 of Title 15, Commerce and Trade, and repealing section 266 of this title] shall take effect three months after its enactment [July 24, 1965].

“(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

“(c) Item 2 of section 41(a), as amended by section 1 of this Act [item 2 of subsec. (a) of this section], and section 4 of this Act [amending section 151 of this title] do not apply in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

“(d) Item 3 of section 31 of the Trademark Act, as amended by section 3 of this Act [item 3 of section 1113(a) of Title 15], applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act [section 1062(c) of Title 15] on or after the effective date of this Act.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i)(4) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 55 of House Document No. 103-7.

PATENT AND TRADEMARK FEES IN FISCAL YEARS 2005 AND 2006

Pub. L. 108-447, div. B, title VIII, Dec. 8, 2004, 118 Stat. 2924, provided that:

“SEC. 801. FEES FOR PATENT SERVICES.

“(a) GENERAL PATENT FEES.—During fiscal years 2005 and 2006, subsection (a) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

“(a) GENERAL FEES.—The Director shall charge the following fees:

“(1) FILING AND BASIC NATIONAL FEES.—

“(A) On filing each application for an original patent, except for design, plant, or provisional applications, \$300.

“(B) On filing each application for an original design patent, \$200.

“(C) On filing each application for an original plant patent, \$200.

“(D) On filing each provisional application for an original patent, \$200.

“(E) On filing each application for the reissue of a patent, \$300.

“(F) The basic national fee for each international application filed under the treaty defined in section 351(a) of this title entering the national stage under section 371 of this title, \$300.

“(G) In addition, excluding any sequence listing or computer program listing filed in an electronic medium as prescribed by the Director, for any application the specification and drawings of which exceed 100 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium), \$250 for each additional 50 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium) or fraction thereof.

“(2) EXCESS CLAIMS FEES.—In addition to the fee specified in paragraph (1)—

“(A) on filing or on presentation at any other time, \$200 for each claim in independent form in excess of 3;

“(B) on filing or on presentation at any other time, \$50 for each claim (whether dependent or independent) in excess of 20; and

“(C) for each application containing a multiple dependent claim, \$360.

For the purpose of computing fees under this paragraph, a multiple dependent claim referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any claim that is canceled before an examination on the merits, as prescribed by the Director, has been made of the application under section 131 of this title. Errors in payment of the additional fees under this paragraph may be rectified in accordance with regulations prescribed by the Director.

“(3) EXAMINATION FEES.—

“(A) For examination of each application for an original patent, except for design, plant, provisional, or international applications, \$200.

“(B) For examination of each application for an original design patent, \$130.

“(C) For examination of each application for an original plant patent, \$160.

“(D) For examination of the national stage of each international application, \$200.

“(E) For examination of each application for the reissue of a patent, \$600.

The provisions of section 111(a) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

“(4) ISSUE FEES.—

“(A) For issuing each original patent, except for design or plant patents, \$1,400.

“(B) For issuing each original design patent, \$800.

“(C) For issuing each original plant patent, \$1,100.

“(D) For issuing each reissue patent, \$1,400.

“(5) DISCLAIMER FEE.—On filing each disclaimer, \$130.

“(6) APPEAL FEES.—

“(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$500.

“(B) In addition, on filing a brief in support of the appeal, \$500, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$1,000.

“(7) REVIVAL FEES.—On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in any reexamination proceeding, \$1,500, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$500.

“(8) EXTENSION FEES.—For petitions for 1-month extensions of time to take actions required by the Director in an application—

“(A) on filing a first petition, \$120;

“(B) on filing a second petition, \$330; and

“(C) on filing a third or subsequent petition, \$570.”

“(b) PATENT MAINTENANCE FEES.—During fiscal years 2005 and 2006, subsection (b) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

“(b) MAINTENANCE FEES.—The Director shall charge the following fees for maintaining in force all patents

based on applications filed on or after December 12, 1980:

- “(1) 3 years and 6 months after grant, \$900.
- “(2) 7 years and 6 months after grant, \$2,300.
- “(3) 11 years and 6 months after grant, \$3,800.

Unless payment of the applicable maintenance fee is received in the United States Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force.

“(c) PATENT SEARCH FEES.—During fiscal years 2005 and 2006, subsection (d) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

“(d) PATENT SEARCH AND OTHER FEES.—

“(1) PATENT SEARCH FEES.—

“(A) The Director shall charge a fee for the search of each application for a patent, except for provisional applications. The Director shall establish the fees charged under this paragraph to recover an amount not to exceed the estimated average cost to the Office of searching applications for patent either by acquiring a search report from a qualified search authority, or by causing a search by Office personnel to be made, of each application for patent. For the 3-year period beginning on the date of enactment of this Act, the fee for a search by a qualified search authority of a patent application described in clause (i), (iv), or (v) of subparagraph (B) may not exceed \$500, of a patent application described in clause (ii) of subparagraph (B) may not exceed \$100, and of a patent application described in clause (iii) of subparagraph (B) may not exceed \$300. The Director may not increase any such fee by more than 20 percent in each of the next three 1-year periods, and the Director may not increase any such fee thereafter.

“(B) For purposes of determining the fees to be established under this paragraph, the cost to the Office of causing a search of an application to be made by Office personnel shall be deemed to be—

- “(i) \$500 for each application for an original patent, except for design, plant, provisional, or international applications;
- “(ii) \$100 for each application for an original design patent;
- “(iii) \$300 for each application for an original plant patent;
- “(iv) \$500 for the national stage of each international application; and
- “(v) \$500 for each application for the reissue of a patent.

“(C) The provisions of section 111(a)(3) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

“(D) The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any applicant who files a written declaration of express abandonment as prescribed by the Director before an examination has been made of the application under section 131 of this title, and for any applicant who provides a search report that meets the conditions prescribed by the Director.

“(E) For purposes of subparagraph (A), a “qualified search authority” may not include a commercial entity unless—

- “(i) the Director conducts a pilot program of limited scope, conducted over a period of not more than 18 months, which demonstrates that

searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications—

- “(I) are accurate; and
- “(II) meet or exceed the standards of searches conducted by and used by the Patent and Trademark Office during the patent examination process;
- “(ii) the Director submits a report on the results of the pilot program to Congress and the Patent Public Advisory Committee that includes—
 - “(I) a description of the scope and duration of the pilot program;
 - “(II) the identity of each commercial entity participating in the pilot program;
 - “(III) an explanation of the methodology used to evaluate the accuracy and quality of the search reports; and
 - “(IV) an assessment of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on—
 - “(aa) patentability determinations;
 - “(bb) productivity of the Patent and Trademark Office;
 - “(cc) costs to the Patent and Trademark Office;
 - “(dd) costs to patent applicants; and
 - “(ee) other relevant factors;

“(iii) the Patent Public Advisory Committee reviews and analyzes the Director’s report under clause (ii) and the results of the pilot program and submits a separate report on its analysis to the Director and the Congress that includes—

- “(I) an independent evaluation of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on the factors set forth in clause (ii)(IV); and
- “(II) an analysis of the reasonableness, appropriateness, and effectiveness of the methods used in the pilot program to make the evaluations required under clause (ii)(IV); and

“(iv) Congress does not, during the 1-year period beginning on the date on which the Patent Public Advisory Committee submits its report to the Congress under clause (iii), enact a law prohibiting searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications.

“(F) The Director shall require that any search by a qualified search authority that is a commercial entity is conducted in the United States by persons that—

- “(i) if individuals, are United States citizens; and
- “(ii) if business concerns, are organized under the laws of the United States or any State and employ United States citizens to perform the searches.

“(G) A search of an application that is the subject of a secrecy order under section 181 or otherwise involves classified information may only be conducted by Office personnel.

“(H) A qualified search authority that is a commercial entity may not conduct a search of a patent application if the entity has any direct or indirect financial interest in any patent or in any pending or imminent application for patent filed or to be filed in the Patent and Trademark Office.

“(2) OTHER FEES.—The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Director shall charge the following fees for the following services:

- “(A) For recording a document affecting title, \$40 per property.

“(B) For each photocopy, \$.25 per page.

“(C) For each black and white copy of a patent, \$3.

The yearly fee for providing a library specified in section 12 of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be \$50.’

“(d) ADJUSTMENTS.—During fiscal years 2005 and 2006, subsection (f) of section 41 of title 35, United States Code, shall apply to the fees established under this section.

“(e) FEES FOR SMALL ENTITIES.—During fiscal years 2005 and 2006, subsection (h) of section 41 of title 35, United States Code, shall be administered as though that subsection is amended—

“(1) in paragraph (1), by striking ‘Fees charged under subsection (a) or (b)’ and inserting ‘Subject to paragraph (3), fees charged under subsections (a), (b), and (d)(1); and

“(2) by adding at the end the following new paragraph:

“(3) The fee charged under subsection (a)(1)(A) shall be reduced by 75 percent with respect to its application to any entity to which paragraph (1) applies, if the application is filed by electronic means as prescribed by the Director.’

“SEC. 802. ADJUSTMENT OF TRADEMARK FEES.

“(a) FEE FOR FILING APPLICATION.—During fiscal years 2005 and 2006, under such conditions as may be prescribed by the Director, the fee under section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) for: (1) the filing of a paper application for the registration of a trademark shall be \$375; (2) the filing of an electronic application shall be \$325; and (3) the filing of an electronic application meeting certain additional requirements prescribed by the Director shall be \$275. During fiscal years 2005 and 2006, the provisions of the second and third sentences of section 31(a) of the Trademark Act of 1946 shall apply to the fees established under this section.

“(b) REFERENCE TO TRADEMARK ACT OF 1946.—For purposes of this section, the ‘Trademark Act of 1946’ refers to the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.’, approved July 5, 1946 (15 U.S.C. 1051 et seq.).

“SEC. 803. EFFECTIVE DATE, APPLICABILITY, AND TRANSITIONAL PROVISION.

“(a) EFFECTIVE DATE.—Except as otherwise provided in this title (including this section), the provisions of this title shall take effect on the date of the enactment of this Act [Dec. 8, 2004] and shall apply only with respect to the remaining portion of fiscal year 2005 and fiscal year 2006.

“(b) APPLICABILITY.—

“(1)(A) Except as provided in subparagraphs (B) and (C), the provisions of section 801 shall apply to all patents, whenever granted, and to all patent applications pending on or filed after the effective date set forth in subsection (a) of this section.

“(B)(i) Except as provided in clause (ii), subsections (a)(1) and (3) and (d)(1) of section 41 of title 35, United States Code, as administered as provided in this title, shall apply only to—

“(I) applications for patents filed under section 111 of title 35, United States Code, on or after the effective date set forth in subsection (a) of this section, and

“(II) international applications entering the national stage under section 371 of title 35, United States Code, for which the basic national fee specified in section 41 of title 35, United States Code, was not paid before the effective date set forth in subsection (a) of this section.

“(ii) Section 41(a)(1)(D) of title 35, United States Code, as administered as provided in this title, shall apply only to applications for patent filed under section 111(b) of title 35, United States Code, before, on,

or after the effective date set forth in subsection (a) of this section in which the filing fee specified in section 41 of title 35, United States Code, was not paid before the effective date set forth in subsection (a) of this section.

“(C) Section 41(a)(2) of title 35, United States Code, as administered as provided in this title, shall apply only to the extent that the number of excess claims, after giving effect to any cancellation of claims, is in excess of the number of claims for which the excess claims fee specified in section 41 of title 35, United States Code, was paid before the effective date set forth in subsection (a) of this section.

“(2) The provisions of section 802 shall apply to all applications for the registration of a trademark filed or amended on or after the effective date set forth in subsection (a) of this section.

“(c) TRANSITIONAL PROVISIONS.—

“(1) SEARCH FEES.—During fiscal years 2005 and 2006, the Director shall charge—

“(A) for the search of each application for an original patent, except for design, plant, provisional, or international application, \$500;

“(B) for the search of each application for an original design patent, \$100;

“(C) for the search of each application for an original plant patent, \$300;

“(D) for the search of the national stage of each international application, \$500; and

“(E) for the search of each application for the reissue of a patent, \$500.

“(2) TIMING OF FEES.—The provisions of section 111(a)(3) of title 35, United States Code, relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in paragraph (1) with respect to an application filed under section 111(a) of title 35, United States Code. The provisions of section 371(d) of title 35, United States Code, relating to the payment of the national fee shall apply to the payment of the fee specified in paragraph (1) with respect to an international application.

“SEC. 804. DEFINITION.

“In this title, the term ‘Director’ means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.”

STUDY ON ALTERNATIVE FEE STRUCTURES

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4204], Nov. 29, 1999, 113 Stat. 1536, 1501A–555, provided that: “The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall conduct a study of alternative fee structures that could be adopted by the United States Patent and Trademark Office to encourage maximum participation by the inventor community in the United States. The Director shall submit such study to the Committees on the Judiciary of the House of Representatives and the Senate not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999].”

COST RECOVERY FOR PUBLICATION

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4506], Nov. 29, 1999, 113 Stat. 1536, 1501A–565, provided that: “The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall recover the cost of early publication required by the amendment made by section 4502 [amending section 122 of this title] by charging a separate publication fee after notice of allowance is given under section 151 of title 35, United States Code.”

CONTINUATION OF MAINTENANCE

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4804(d)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–590, provided that: “The Under Secretary of Commerce for Intellectual Property and Director of the United States

Patent and Trademark Office shall not, pursuant to the amendment made by paragraph (1) [amending this section], cease to maintain, for use by the public, paper or microform collections of United States patents, foreign patent documents, and United States trademark registrations, except pursuant to notice and opportunity for public comment and except that the Director shall first submit a report to the Committees on the Judiciary of the Senate and the House of Representatives detailing such plan, including a description of the mechanisms in place to ensure the integrity of such collections and the data contained therein, as well as to ensure prompt public access to the most current available information, and certifying that the implementation of such plan will not negatively impact the public."

ACCESS TO ELECTRONIC PATENT INFORMATION

Pub. L. 105-289, § 4, Oct. 27, 1998, 112 Stat. 2781, provided that:

"(a) IN GENERAL.—The United States Patent and Trademark Office shall develop and implement statewide computer networks with remote library sites in requesting rural States such that citizens in those States will have enhanced access to information in their State's patent and trademark depository library.

"(b) DEFINITION.—In this section, the term 'rural States' means the States that qualified on January 1, 1997, as rural States under section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796bb(b) [3796bb(b)])."

WAIVER OF CERTAIN RESTRICTIONS

Section 2(c) of Pub. L. 102-204 provided that: "Surcharges established for fiscal year 1992 under section 10101(c) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508, set out below] may take effect on or after 1 day after such surcharges are published in the Federal Register. Section 553 of title 5, United States Code, shall not apply to the establishment of such surcharges for fiscal year 1992."

UNSPECIFIED PATENT FEES FOR FISCAL YEAR 1992; EFFECTIVE DATE CONTINGENT UPON PUBLICATION IN FEDERAL REGISTER

Section 5(c)(2) of Pub. L. 102-204 provided that fees established by the Commissioner of Patents and Trademarks under subsec. (d) of this section during fiscal year 1992 could take effect on or after 1 day after being published in the Federal Register, and that subsec. (g) of this section and section 553 of title 5 were not to apply to the establishment of such fees during fiscal year 1992.

PATENT INFORMATION DISSEMINATION

Section 11 of Pub. L. 102-204 set out definitions, established a patent information demonstration program, stipulated the information to be disseminated, provided for fees for CD-ROM purchase, and required a report to Congress one year after Dec. 10, 1991.

SURCHARGES ON PATENT FEES

Pub. L. 101-508, title X, § 10101(a)-(c), Nov. 5, 1990, 104 Stat. 1388-391, as amended by Pub. L. 102-204, § 2(b), Dec. 10, 1991, 105 Stat. 1636; Pub. L. 103-66, title VIII, § 8001, Aug. 10, 1993, 107 Stat. 402, provided for surcharges for fees under this section during fiscal years 1991 through 1998, and stipulated how surcharges would be used and credited in those fiscal years.

EFFECT ON OTHER LAWS

Pub. L. 101-508, title X, § 10103, Nov. 5, 1990, 104 Stat. 1388-392, provided that: "Except for section 10101(d) [not classified to the Code], nothing in this subtitle [subtitle B (§§ 10101-10103) of title X of Pub. L. 101-508, enacting provisions set out as notes under this section and section 1 of this title] affects the provisions of Public Law 100-703 (102 Stat. 4674 and following) [see Tables for classification]."

PUBLIC ACCESS TO PATENT AND TRADEMARK OFFICE INFORMATION

Pub. L. 100-703, title I, § 104(b), (c), Nov. 19, 1988, 102 Stat. 4675, provided that the Commissioner of Patents and Trademarks maintain patent and trademark collections, search rooms, and libraries for use by the public without fees and authorized establishment of fees for access by the public to automated search systems of the Patent and Trademark Office, prior to repeal by Pub. L. 102-204, § 9, Dec. 10, 1991, 105 Stat. 1641. See section 41(i) of this title.

Pub. L. 99-607, § 4, Nov. 6, 1986, 100 Stat. 3471, provided that the Commissioner of Patents and Trademarks could not impose a fee for use of public patent or trademark search rooms and libraries and that costs of such rooms and libraries should come from amounts appropriated by Congress, prior to repeal by Pub. L. 100-703, title I, § 104(a), Nov. 19, 1988, 102 Stat. 4675.

PATENT FEES

Pub. L. 100-703, title I, § 103(b), Nov. 19, 1988, 102 Stat. 4674, prohibited Commissioner of Patents and Trademarks, during fiscal years 1989, 1990, and 1991, from increasing fees established under subsec. (d) of this section, except for purposes of making adjustments which in the aggregate did not exceed fluctuations during the previous three years in the Consumer Price Index, and from establishing additional fees under such section during such fiscal years. Similar provisions were contained in Pub. L. 99-607, § 3(b), Nov. 6, 1986, 100 Stat. 3471.

Section 404 of Pub. L. 98-622 provided that:

"(a) Notwithstanding section 41 of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], no fee shall be collected for maintaining a plant patent in force.

"(b) Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], the Commissioner of Patents and Trademarks [now Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office] may accept, after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1982."

§ 42. Patent and Trademark Office funding

(a) All fees for services performed by or materials furnished by the Patent and Trademark Office will be payable to the Director.

(b) All fees paid to the Director and all appropriations for defraying the costs of the activities of the Patent and Trademark Office will be credited to the Patent and Trademark Office Appropriation Account in the Treasury of the United States.

(c) To the extent and in the amounts provided in advance in appropriations Acts, fees authorized in this title or any other Act to be charged or established by the Director shall be collected by and shall be available to the Director to carry out the activities of the Patent and Trademark Office. All fees available to the Director under section 31 of the Trademark Act of 1946 shall be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.

(d) The Director may refund any fee paid by mistake or any amount paid in excess of that required.

(e) The Secretary of Commerce shall, on the day each year on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

(July 19, 1952, ch. 950, 66 Stat. 796; Pub. L. 94-131, § 4, Nov. 14, 1975, 89 Stat. 690; Pub. L. 96-517, § 3, Dec. 12, 1980, 94 Stat. 3018; Pub. L. 97-247, § 3(g), Aug. 27, 1982, 96 Stat. 319; Pub. L. 97-258, § 3(i), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 102-204, § 4, 5(e), Dec. 10, 1991, 105 Stat. 1637, 1640; Pub. L. 105-358, § 4, Nov. 10, 1998, 112 Stat. 3274; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4205, 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-555, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 79 (Mar. 6, 1920, ch. 94, § 1 (part), 41 Stat. 503, 512).

Language has been changed.

REFERENCES IN TEXT

Section 31 of the Trademark Act of 1946, referred to in subsec. (c), is classified to section 1113 of Title 15, Commerce and Trade.

AMENDMENTS

2002—Subsecs. (a), (b). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Subsecs. (a), (b). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Subsec. (c). Pub. L. 106-113 substituted “Director” for “Commissioner” wherever appearing and, in second sentence, substituted “All fees available” for “Fees available” and “shall be used” for “may be used”.

Subsec. (d). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], substituted “Director” for “Commissioner”.

1998—Subsec. (c). Pub. L. 105-358 substituted first sentence for former first sentence which read as follows: “Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trademark Office.”

1991—Subsec. (c). Pub. L. 102-204, § 5(e), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Revenues from fees will be available to the Commissioner of Patents to carry out, to the extent provided for in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), shall be used exclu-

sively for the processing of trademark registrations and for other services and materials related to trademarks.”

Subsec. (e). Pub. L. 102-204, § 4, added subsec. (e).

1982—Subsec. (b). Pub. L. 97-258 struck out “, the provisions of section 725e of title 31, United States Code, notwithstanding” after “United States”.

Subsec. (c). Pub. L. 97-247 inserted provision that fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.

1980—Pub. L. 96-517 designated existing provision relating to payment of patent fees as subsec. (a) and struck out provision that, except as provided in sections 361(b) and 376(b) of this title, the Commissioner deposit fees paid in the Treasury of the United States in such manner as directed by the Secretary of the Treasury, designated existing provision relating to return of excess amounts paid as subsec. (d), and added subsecs. (b) and (c).

1975—Pub. L. 94-131 inserted “, except as provided in sections 361(b) and 376(b) of this title.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, § 4732(a)(10)(A)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-358 effective Oct. 1, 1998, see section 5 of Pub. L. 105-358, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-517 effective on first day of first fiscal year beginning on or after one calendar year after Dec. 12, 1980, subject to authorization of appropriation account credits from collected reexamination fees prior to the effective date, made available for payment of reexamination proceedings costs, see section 8(c) of Pub. L. 96-517, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE

Pub. L. 107-273, div. C, title III, § 13102, Nov. 2, 2002, 116 Stat. 1899, provided that:

“(a) IN GENERAL.—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2003 through 2008 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

“(1) title 35, United States Code; and

“(2) the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes’, approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

“(b) ESTIMATES.—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intel-

lectual Property and the Director of the Patent and Trademark Office (in this subtitle [subtitle A (§§13101–13106) of title III of div. C of Pub. L. 107–273, amending sections 134, 141, 303, 312, and 315 of this title and enacting provisions set out as notes under sections 2, 134, and 303 of this title] referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

“(1) the Committees on Appropriations and Judiciary of the Senate; and

“(2) the Committees on Appropriations and Judiciary of the House of Representatives.”

APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER

Pub. L. 100–703, title I, §102, Nov. 19, 1988, 102 Stat. 4674, provided that: “Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99–607, §2, Nov. 6, 1986, 100 Stat. 3470.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

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AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, §13206(a)(6), Nov. 2, 2002, 116 Stat. 1904, substituted “Examination of Application” for “Examination of Applications” in heading of chapter 12.

1982—Pub. L. 97–256, title I, §101(6), Sept. 8, 1982, 96 Stat. 816, added item for chapter 18.

1975—Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “Patent and Trademark Office” for “Patent Office” in heading of chapter 13.

CHAPTER 10—PATENTABILITY OF INVENTIONS

Sec.	
100.	Definitions.
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AMENDMENTS

1990—Pub. L. 101–580, §1(b), Nov. 15, 1990, 104 Stat. 2863, added item 105.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term “invention” means invention or discovery.

¹ So in original. Does not conform to chapter heading.

(b) The term “process” means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms “United States” and “this country” mean the United States of America, its territories and possessions.

(d) The word “patentee” includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

(e) The term “third-party requester” means a person requesting ex parte reexamination under section 302 or inter partes reexamination under section 311 who is not the patent owner.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4603], Nov. 29, 1999, 113 Stat. 1536, 1501A–567.)

HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase “invention or discovery” and its derivatives throughout the revised title. The present statutes use the phrase “invention or discovery” and derivatives.

Paragraph (b) is noted under section 101.

Paragraphs (c) and (d) are added to avoid the use of long expressions in various parts of the revised title.

AMENDMENTS

1999—Subsec. (e). Pub. L. 106–113 added subsec. (e).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective Nov. 29, 1999, and applicable to any patent issuing from an original application filed in the United States on or after that date, see section 1000(a)(9) [title IV, §4608(a)] of Pub. L. 106–113, set out as a note under section 41 of this title.

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(July 19, 1952, ch. 950, 66 Stat. 797.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, §1, 29 Stat. 692, (2) May 23, 1930, ch. 312, §1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, §1, 53 Stat. 1212).

The corresponding section of existing statute is split into two sections, section 101 relating to the subject matter for which patents may be obtained, and section 102 defining statutory novelty and stating other conditions for patentability.

Section 101 follows the wording of the existing statute as to the subject matter for patents, except that reference to plant patents has been omitted for incorporation in section 301 and the word “art” has been replaced by “process”, which is defined in section 100. The word “art” in the corresponding section of the existing statute has a different meaning than the same word as used in other places in the statute; it has been interpreted by the courts as being practically synonymous with process or method. “Process” has been used as its meaning is more readily grasped than “art” as interpreted, and the definition in section 100(b) makes it clear that “process or method” is meant. The remainder of the definition clarifies the status of processes or methods which involve merely the new use of a known process, machine, manufacture, composition of matter, or material; they are processes or methods under the statute and may be patented provided the conditions for patentability are satisfied.